

DRAFT

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

**October 5, 2007
Carmel Clay Educational Service Center
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, G. Bates, R. Burden, C. Endres, K. Farrell, D. Geeslin, J. Hammond, R. Kirby, B. Kirk, K. Mears, J. Nally, M. Ramos, C. Shearer, D. Schmidt, J. Swaim, J. Swiss, S. Tilden, S. Yoder

ADVISORY COUNCIL MEMBERS NOT PRESENT:

D. Downer, C. H. Hansen, B. Henson, M. Johnson, B. Lewis, A. Shields, T. Wyatt

INDIANA DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

P. Ash, K. Bassett, N. Brahm, N. Confer, S. Knoth, B. Reynolds T. Rinehart

VISITORS:

Jennifer Akers (Parent), Liz Freeman Floyd (Autism Coalition), Debra Harmon (ISHA), Cindy Lawrence (ISD); Susan Lockwood (IDOC), Loui Lord Nelson (R.A.I.S.E.)

INTERPRETERS:

Adam Roark
Lisa Warren
Carrie Martin
Rich Prather

MEETING

D. Schmidt opened the meeting at 9:08 a.m.

The minutes were amended by K. Farrell, J. Swiss and S. Yoder. J. Swiss moved to accept the minutes as amended. Seconded by G. Bates. Motion Carried

Business

Article 7 Revisions Comments from Public

D. Harmon addressed the Council regarding concerns that the Indiana Speech and Hearing Association (ISHA) have regarding the revisions made thus far to Article 7. A document detailing ISHA's concerns was distributed to the Council.

J. Swaim said that she attended one of the Article 7 forums in Franklin and that she was pleased that there were teachers and administrators that attended the meeting and were very concerned about the children. She shared that she requested their insight.

Article 7 Revisions

Discussion

An abbreviated version of Roberts Rules of Order was provided for the Council. The intent is for all to understand what the 'official' rules for voting are as the Council moves into finalizing the draft of Article 7 that will be presented to the State Board.

RULE 47 State Funding of Excess Costs

B. Marra discussed the evolution for the excess cost funding rule (formerly S-5 applications and now known as community and alternative services). The purpose of the Rule is to provide schools with the necessary, additional funds when a student's needs become so intense that they need an extraordinary amount of funds to provide a free and appropriate public education (FAPE) to the child.

C. Shearer asked a question regarding the funding. B. Marra said that the school has to petition the division for funds. Because it is an excess cost measure, DOE provides the funding balance between the school and the money required by the facility to provide FAPE to the child.

J. Swaim asked whether this funding would apply if a student wanted to attend St. Joseph School for the Deaf. B. Marra stated that yes this would apply. S. Yoder inquired if only schools could apply for this. B. Marra answered that yes, only local education agencies (LEA) could apply for the additional funds. S. Yoder indicated that they have several children that would need this service. B. Marra said that it is the school corporation that is responsible but that the DOE works with other agencies to provide the services. The funds are available for all exceptionality areas as long as the LEA has attempted to serve the child locally and has exhausted all local resources and now needs additional financial assistance to help provide FAPE to the child. The LEA should try to serve the

student first locally and then apply for additional funding. B. Marra reiterated that it is important that the school meet the threshold of service provision before applying for additional funds for the services. He stated further that DOE believes the most important parental concern should be not how the services are funded but instead that the services are provided. The shift for the language of this rule is that the case conference committee must determine the need for services regardless of who will pay for the service. There are some districts who will tell the parent at a case conference committee that they will provide this service if DOE will pay for it; but if DOE does not provide the funding, the service will not be provided. This is contrary to Article 7 as the LEA must provide the service if there is a determined need; DOE will assist if the LEA can prove that they have attempted all local efforts and now require additional assistance from the state.

B. Kirk asked if there are issues of concern in the home that the LEA does not observe, is this an opportunity for a due process hearing or mediation? B. Marra stated the right to a due process hearing or mediation still remains. The shift in the language ensures that if DOE denies the application for additional funding the school corporation is still responsible for providing these services (they cannot switch to another IEP or an earlier version of the IEP). B. Kirk inquired if a DOE denial would more likely be related to a placement being too expensive or the school not providing enough funding. B. Marra answered that the denial would more likely be related to the services provided (or not) by the school than the cost of the services. B. Marra stated that he would like the SAC to recognize that the burden of requesting funds should be off the parent and on the school instead. Another part of this is the 'step down' need – when the student is moving from the residential facility and transitioning back to the home school. The Division will (if all requirements are met) assist in providing funds to help ensure that the transition is smooth and seamless.

R. Kirby had concern with the timelines and the State's response time. B. Marra stated that DOE has 30 days to respond. P. Ash stated that the Division responds as soon as the application are received. There are some situational concerns when they try to speed up the process. B. Kirk asked for clarification on the procedure and outcome of a due process hearing. B. Marra stated that if the Independent Hearing Officer (IHO) decides that the student needs to be placed, that decision will probably stand because DOE does not usually challenge the IHO's finding. None of the new language changes the procedure for due process. B. Marra gave examples of when services would need to be applied. B. Kirk had concerns with the parents having to go through the due process while their child is having the issues at home. B. Marra said that nothing prohibits the school from providing the services before they apply to DOE for the funds.

J. Swaim moved to approve 511 IAC 7-47-1 and 511 7 IAC 7-47-2 as written. Seconded by G. Bates.

R. Burden inquired as to when a school is denied what is the next step that the school has to take. B. Marra stated that IDOE will provide technical instruction to the school to rewrite their application.

D. Geeslin asked if there should be clarification that all agencies who are involved in the decision must be involved in the application process including the proposed placement. He would like for the Division procedures to ensure that all parties are kept informed as to what is going on, what questions or clarifications are being made, etc.

Question was called.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

Update on Survey Results

S. Knoth reviewed brief results of the public forum survey. The Council received three documents; the parent forum survey, a compilation of comments from the forums put together by IN*Source and ASK, and a spreadsheet compiling the results of the 523 completed surveys. Pages 2 of 3 of the spreadsheet give demographic information about the survey respondents.

R. Kirby said that she would like to see comments to the surveys. S. Knoth said that these would be available after the survey cut-off date, which is October 15, 2007.

B. Marra asked that SAC review the comments that S. Knoth presented and then come back in the next session to make decisions. He added that the DEL has been taking into consideration the comments that have been received.

Rule 32 Definitions

B. Kirk shared a concern with the overall style of the document, specifically discussing the way that the document makes references to other rules and codes. She stated that it causes an interruption of the thought process as the reader reads. She gave the example of the definition for charter school where Article 7 refers to several different rules. She suggests putting the definition in words and footnoting the referenced sites. D. Schmidt concurred with B. Kirk's concerns.

C. Endres inquired as to if there are some spots where some terms need to have priority to be defined over other terms. N. Brahm stated that sometimes the reference to the rule sites is important because the language is in the citation changes. The citation does not change but the language may. R. Kirby

suggested that maybe use a reference if it is an internal citation or an external citation. Discussion ensued on different ways that this may be revised. N. Brahm explained the rules for legal drafting and setting the perimeters of these rules. She added that Live Learn Work and Play is provided to help assist in understanding the rules of Article 7. R. Burden said in most cases people do not understand what they read. Sometimes the answers to their questions are in previous text. He does not feel that there is an easier way to write the definitions. S. Yoder concurred.

K. Farrell asked if the SAC could table the review of the comments until the next meeting. She also asked if the SAC would be provided follow-up to the specific areas where Article 7 has gone beyond Federal law. B. Marra said that yes, the SAC would be reviewing those areas in preparation for his presentation to the State Board. The Division will be meeting with CEEP from Indiana University to prepare a fiscal impact statement.

R. Burden had concerns with the language regarding 'transfer of records'. K. Farrell stated that after hearing R. Burden's comments that she may wish to review this language again to not allow the student to stand out from general education students. S. Tilden concurred but said that the argument may arise that more information should be given for all students.

K. Mears stated that with regard to 511 IAC 7-32-21 Consultation and collaboration, non-public schools 'consultation' is still a concern.

K. Farrell had concern with IEP components versus the service plan components. N. Brahm explained the difference between the two.

K. Farrell asked for an explanation on how home schooling consultation. B. Marra said that a home school student is considered a private school student and that the same procedure would take place.

B. Marra described how the funding is formulated. There is a formula called the proportionate share formula. There are federal funds that are formulated for each school, and the State law requires that all students receive some form of service. K. Farrell said that her concern was with whether the Federal language considered child find. B. Marra said that the APC is for the state, and there is no law that says it has to be spent on special education children. The Federal law does say that the funds have to be spent on special education needs.

R. Burden discussed early childhood education and responses from the parent forums and other places with regard to the 12.5 hours of service and student-teacher ratio. R. Kirby stated that she had heard comments in support of requiring numbers to confirm student teacher ratio.

R. Burden said that he feels that if a significant change is made to the student's services there ought to be written consent to make that change. B. Marra said that if the parent takes action (either through mediation or due process) the last agreed upon IEP is the 'stay put' provision. Discussion on written consent, prior written notice and notice ensued.

R. Kirby asked what the protocol is for public comment. B. Marra stated that questions/concerns should be clarifying questions.

Discussion concluded.

S. Tilden motioned to adjourn. Seconded by J. Nally.

Meeting adjourned at 2:58 p.m.